

THE REALITIES OF RESTITUTION

Since the defendant has been convicted of a crime, his/her employment opportunities and ability to earn money may be limited.

Defendants who are paying as much as they are able to pay toward their restitution, even if it is an amount that is substantially less than what was ordered, cannot be forced to pay more.

In cases involving multiple victims, restitution is usually ordered to be disbursed on a pro-rated basis. This means that the defendant's monthly payments will be divided among the multiple victims based on the percentage of the victim's loss.

The defendant must have an income and/or assets for a "criminal restitution order" to be enforced in civil court.

The majority of the defendants who are ordered to pay restitution never pay the total amount.

In order to receive restitution payments, victims must keep their address up-to-date with the County Clerk of the Court.

Apache: (928) 337-7550
Cochise: (520) 432-8570
Coconino: (928) 226-6053
Gila: (928) 425-3231
Graham: (928) 428-3100
Greenlee: (928) 865-4242
La Paz: (928) 669-6131
Maricopa: (602) 506-8621
Mohave: (928) 753-0713
Navajo: (928) 524-4184
Pima: (520) 740-3200
Pinal: (520) 866-5300
Santa Cruz: (520) 375-7700
Yavapai: (928) 771-3312
Yuma: (928) 329-217

FACTS ABOUT RESTITUTION

- Restitution cannot be discharged as part of bankruptcy proceedings.
- There is no filing fee for a restitution lien.
- The Attorney General's Office maintains jurisdiction over a defendant only until his/her sentence ends.
- A defendant's probation may be extended for up to three years if restitution has not been paid in full.
- Defendants still owing monies at the end of their sentence will have a "**criminal restitution order**" filed on any unpaid balance. Such orders may be recorded and enforced as any civil judgement. Unlike a civil judgement, however, they never require renewal.
- A restitution order is enforceable against the estate of a deceased defendant.

**Questions?
Give us a call.**

**Attorney General's
Office of Victim Services**

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(602) 542-4911

Tucson
(520) 628-6456

Toll Free: (866) 742-4911

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Restitution: The Realities

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*learn more about
victims' rights on
the internet at
www.azag.gov*

THE BASICS OF RESTITUTION

The Arizona Constitution provides that crime victims are “to receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim’s loss or injury.”

This pamphlet about restitution has been sent to you because the defendant in your case was ordered to pay restitution to you. Restitution is most often ordered at the time of sentencing and may include reimbursement for:

- medical expenses
- mental health counseling
- funeral costs
- expenses to restore physical safety
- lost or damaged property
- lost wages

The judge is required by law in determining the total amount of restitution to consider all of the victim’s economic losses resulting from the crime for which the defendant is convicted. The judge is also required by law, in establishing a payment schedule, to consider the defendant’s *ability to pay* when entering an order for restitution. Based on the defendant’s ability to pay, the court establishes a payment schedule (which usually requires monthly payments). The payments are made by the defendant to the County’s Clerk of Court, who disburses the money to you.

A CASE EXAMPLE

Let us say in your case, the defendant was convicted of stealing \$9,000 from you. The judge was required by law to order the defendant to pay \$9,000 to you. The court must then consider the defendant’s ability to pay to determine a payment schedule. *If the defendant was sentenced to probation*, say for three years, the defendant may be ordered to pay restitution in monthly increments. In your case, let us say the judge found that the defendant was able to make monthly payments of \$30. Even if the defendant fully complies with the order, a total of only \$1,080 would have been paid by the expiration of the sentence.

If the defendant was sentenced to prison, the court would still have to order the defendant to pay restitution in the total amount of \$9,000. However, the court may only order that 30% of any in-custody earnings be deducted and paid toward restitution. While incarcerated, the inmate may not work at all, or may earn as little as 10 cents per hour. This means you will not receive much, if any, of your money back while the defendant is in custody.

WHAT IF THE DEFENDANT DOES NOT PAY?

If the defendant is on probation, the probation officer must notify the sentencing judge upon finding that a defendant has become in arrears in an amount totaling two full court-ordered monthly payments of restitution.

The notification must either: 1) propose a modification to the monthly payment schedule; 2) recommend that probation be revoked; or 3) outline the reasons for the delinquency and how long it is expected to last. A copy of the notification must be provided to any victim who has requested post-conviction notice.

THE ATTORNEY GENERAL’S RESTITUTION PROGRAM

Initially, when a criminal charge is filed against a defendant by the Arizona Attorney General’s Office, an asset search is performed to see if the defendant owns any viable real estate and/or vehicles. If so, a **Criminal Restitution Lien** is filed on behalf of the State of Arizona. The filing of a lien gives notice to all persons dealing with the defendant or dealing with the property identified in the lien of the State’s interest (on behalf of the victims) in the property. This lien will not be removed until the defendant pays restitution in full or until the property is sold and the profit is given to the Clerk of Court for disbursement to the victim(s).

The Arizona Attorney General’s Office of Victim Services has a Restitution Advocate who monitors the restitution payments of each defendant in cases that the Attorney General’s Office prosecuted.

If a defendant is non-compliant with the restitution order, the following is a list of actions the Restitution Advocate might take to help:

- Contact the probation officer to find out why the defendant is behind in payments, assist in facilitating payments, and in seeking remedies to the problem;
- Act as an intermediary with the Court, the Department of Corrections and/or the Probation Department;
- Answer questions that you may have about the criminal justice system;
- Put you in touch with the prosecuting attorney, or with the appropriate court personnel.